REMARKS

In the Office Action, the claims were rejected under 35 U.S.C. 103(a) . The revised claims refer to the physical layer ARQ mechanism which operates transparently with respect to the higher layer ARQ mechanism. In the Office Action, Fong (U. S. Patent No. 6,760,860) is specifically referred to as teaching such a limitation. However, as pointed out in the office action, Fong discloses an ARQ operation where the layer 1 ARQ works in cooperation with the layer 2 ARQ operation to avoid unnecessary transmissions. Clearly, when a layer 1 and layer 2 ARQ mechanisms are working in cooperation, they are not working transparently with respect to each other. If the layer 1 mechanism is not present in the system, the layer 2 mechanism would be aware of this situation due to its cooperative nature.

The present claims provide a physical layer ARQ mechanism which receives data from a higher layer ARQ mechanism and the physical layer ARQ mechanism is transparent to the higher layer ARQ mechanism. As a result, the physical layer ARQ mechanism can be retrofitted back into networks that currently have a higher layer ARQ mechanism. This transparent ARQ mechanism allows for alleviation of the congestion at higher layers while still maintaining backward compatibility without any other modifications.

In the Office Action, the claims were provisionally rejected under obviousness-type double patenting in view of claims 1-12, 24 and 25 of co-pending
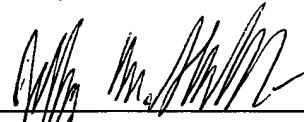
application No. 10/084,414. Applicants respectfully submit that the claims as amended are not obvious in view of that co-pending application and accordingly, request that the obviousness-type double patenting rejection be withdrawn.

Reconsideration and entry of this amendment is respectfully requested.

Respectfully submitted,

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